

**PLANNING AND ZONING COMMISSION
STAFF REPORT**

October 23, 2008



Planning Variance PV08-32: Tammisha L. Farmer

CASE DESCRIPTION: a request for approval of a 4.5-foot variance from the minimum 7.5-foot side building setback generally required on lots in residential zoning districts of Bryan, to legitimize previous construction of a carport that extends within 3 feet of the northwest (side) property line on the subject property

LOCATION: 910 South Gordon Street between East 33rd Street and Woodland Drive

LEGAL DESCRIPTION: the northeast 26.05 feet of Lot 13 and all of Lot 14 in Block 3 of Cavitt's Southmore Addition

ZONING: Residential District – 5000 (RD-5)

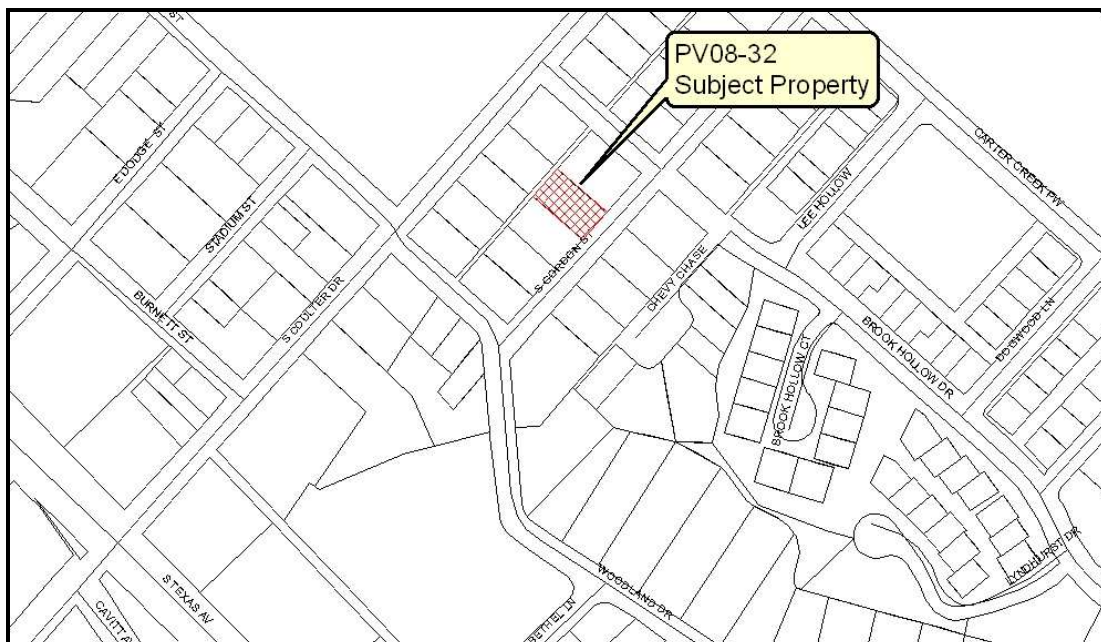
EXISTING LAND USE: single-family home

APPLICANT(S): Ms. Tammisha L. Farmer

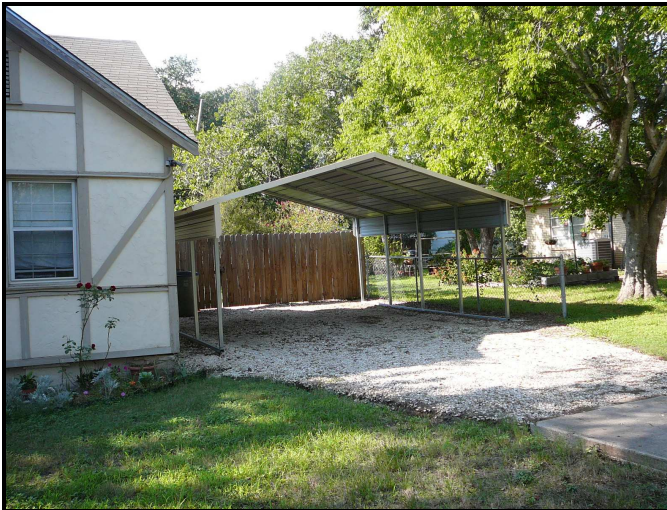
STAFF CONTACT: Randy Haynes, Staff Planner

SUMMARY RECOMMENDATION: Staff recommends **denying** this request for variance.

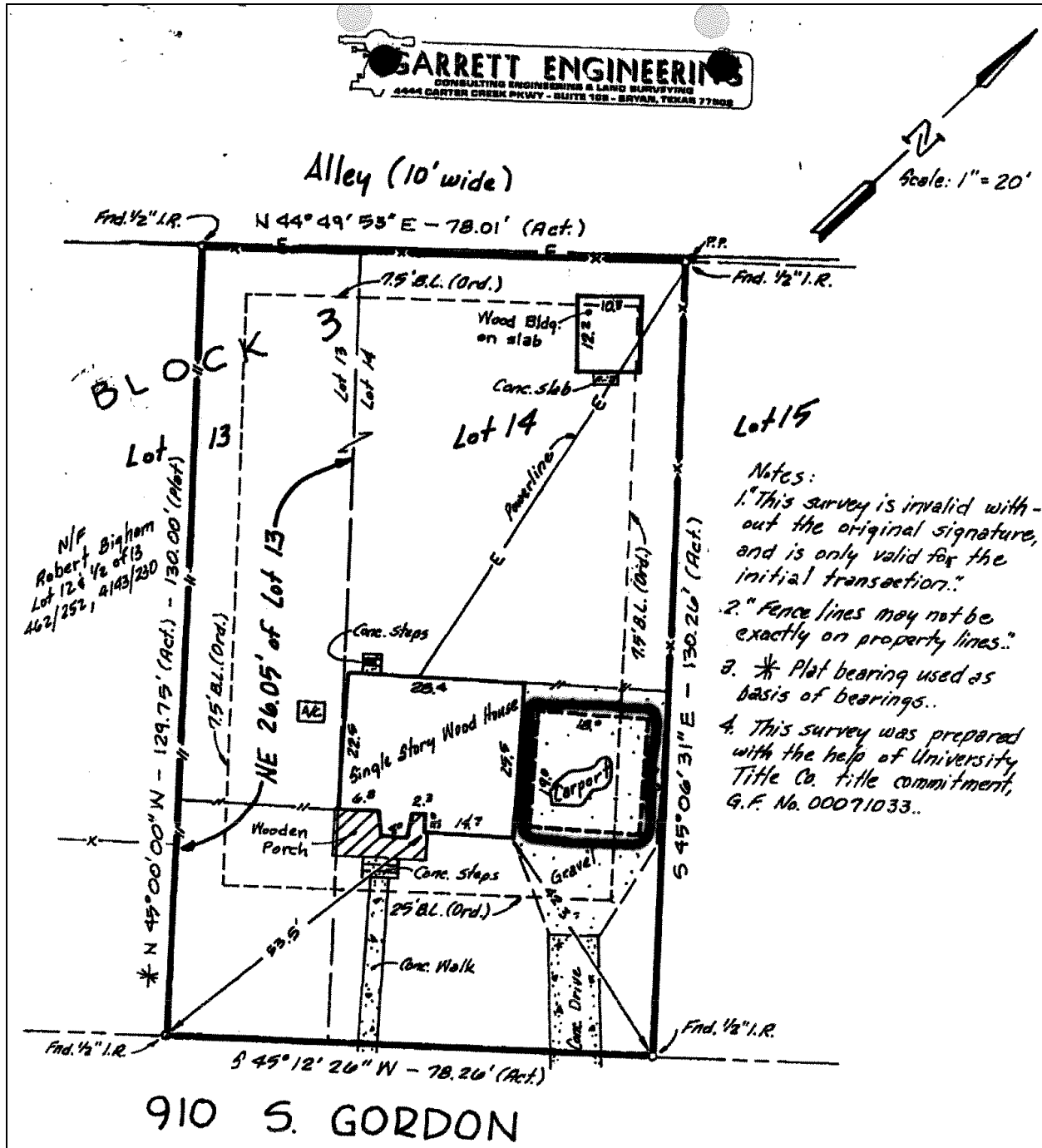
LOCATION MAP:



CURRENT PHOTOGRAPHS:



MARCH 2007 SURVEY DRAWING:



BACKGROUND:

The applicant is requesting a 4.5-foot variance from the minimum required 7.5-foot side building setback generally required of buildings within the Residential District – 5000 (RD-5) zoning district. If approved, this variance will legitimize the previous construction of an open carport as shown on the accompanying site plan.

When the applicant, Ms. Farmer, purchased the subject property in March, 2007, the carport was already in place. The survey made of the property March 24, 2007 depicts the location of the carport. The survey further notes that the “fence lines may not be exactly on property lines”. The existing chain-link fence is thirty inches from the vertical supports of the structure on the adjacent property. The carport does not appear on 2004 aerial photograph of the property.

On May 14, 2008 an anonymous complaint was made with the city’s Code Enforcement Department. The complainant alleged that the carport structure had been built without a building permit, which turned out to be the case. Ms. Farmer responded to notification by code enforcement by applying for a building permit. During the application process for the building permit, the survey drawing submitted as the site plan revealed that the structure did not meet side building setback requirements. The applicant’s options are to remove or modify the structure or request and obtain a variance to the minimum side building setback standard.

ANALYSIS:

The Planning and Zoning Commission may authorize a variance from minimum building setback standards stipulated in the Land and Site Development Ordinance. No variance shall be granted unless the Planning and Zoning Commission finds that all of the following criteria are met:

1. That the granting of the variance will not be detrimental to the public health, safety or welfare, or materially injurious to properties or improvements in the area (an area encompassing approximately a 200-foot radius);

By adopting minimum lot area, building height and building setback requirements, Bryan’s City Council established minimum standards designed to protect the character of development in Bryan. These standards also help maintain property values by ensuring predictability in development. Enforcement of minimum development standards provide property owners with the assurance that new neighborhood development will conform to the same standards. Staff is concerned that allowing encroachments into minimum building setbacks repeatedly in a neighborhood not only creates substandard building separation conditions, but may also undermine the relative stability this neighborhood is enjoying and lead to an overcrowding of land with buildings.

This request is a 4.5-foot (or 60 percent) variation from the applicable building setback standard. In this particular case, staff contends that there is sufficient room between the residence on the subject property and the side property line to construct a carport in compliance with the 7.5-foot side building setback standard. Staff believes that approving this request in the absence of any special circumstances relating to the size, shape, area, topography, surrounding conditions or location of the property, would set an unwanted precedent. Staff believes that the existence of the unpermitted carport on the property at the time of purchase by the current owner does not constitute a special circumstance.

The ordinance prescribes that “variances may be granted only when in harmony with the general purpose and intent of this chapter so that the public health, safety and welfare may be secured and substantial justice done”. Staff is less confident that requiring the owner to alter or remove the structure to comply with the application of the setback standard meets the “substantial justice” test. While staff recognizes that fairness issues surround this particular case, the consensus of the staff remains that observing the adopted standards is of greater importance to the community.

2. That the granting of the variance will not be detrimental to the public health, safety or welfare, or materially injurious to properties abutting the subject property;

Staff believes that granting the side setback variance could have detrimental effect to the abutting properties for the reasons mentioned above.

3. That the hardships and difficulties imposed upon the owner/applicant are greater than the benefits to be derived by the general public through compliance with the requirements of this chapter.

Staff contends that there are benefits to be derived by the general public resulting from the observation setback standards. Staff further finds that modification or removal of the encroaching carport structure from the side setback area, in this particular case, will cause minimal hardship to the applicant.

RECOMMENDATION:

Staff recommends **denying** this request for variance.